

AMENDED IN ASSEMBLY MAY 16, 2001
AMENDED IN ASSEMBLY FEBRUARY 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 36

Introduced by Assembly Member Steinberg

December 4, 2000

An act to add Section 188 to the Code of Civil Procedure, relating to confidentiality.

LEGISLATIVE COUNSEL'S DIGEST

AB 36, as amended, Steinberg. Confidentiality of writings.

Existing law provides for the confidentiality of trade secrets, government records, records maintained by financial and other institutions, privileged communications, and other writings.

This bill would provide that, in an action based upon injury, wrongful death, or financial loss allegedly caused by a defective product, financial fraud, unfair insurance claims practice, or environmental hazard, as defined, specified information contained in settlement agreements and confidentiality agreements not filed with the court, and specified information acquired through discovery, shall be presumed to be public information and may not be kept confidential pursuant to an agreement of the parties. The bill would permit this information to be kept confidential only pursuant to a court order based upon specified findings. The bill would further provide that, unless the information is a trade secret, as defined, or otherwise privileged, in an action based upon injury, wrongful death, or financial loss allegedly caused by a defective product, financial fraud, unfair insurance claims practice, or

environmental hazard, any portion of an agreement or contract that restricts a party from disclosing certain information to a governmental agency, as specified, is void and may not be enforced, with specified exceptions. The bill would authorize a court to request certain documents to implement its provisions. This bill would provide that its provisions are not intended to affect the confidentiality of communications, negotiations, or ~~settlement agreements~~ discussions between participants in mediation proceedings, or the confidentiality of evidence protected under specified sections of the Evidence Code. The bill would also state legislative findings.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Secrecy agreements that prohibit disclosure to the public or
4 public safety agencies of information ~~relating to~~ *that is evidence*
5 *of* defective products, financial fraud, unfair insurance claims
6 practices, or environmental hazards are injurious to the health,
7 safety, and economic well-being of all Californians.

8 (b) Secrecy agreements can have tragic consequences. They
9 can also allow companies to shield information that shows a
10 practice of treating consumers unfairly and can permit those
11 companies to continue illegal practices without accountability,
12 and allow companies to shield life-threatening dangers and
13 harmful practices from public view, thereby severely jeopardizing
14 public welfare and safety.

15 (c) It is therefore against the public interest to allow secrecy
16 agreements about defective products, financial fraud, unfair
17 insurance claims practices, or environmental hazards to remain
18 confidential except in very limited circumstances.

19 SEC. 2. Section 188 is added to the Code of Civil Procedure,
20 to read:

21 188. (a) The Legislature finds that the Judicial Council has
22 adopted Rule 243.1 of the California Rules of Court, which creates
23 a presumption against secrecy for certain documents filed with the
24 court. It is the intent of the Legislature to better protect
25 Californians from injuries, deaths, or financial loss caused by



1 defective products, financial fraud, unfair insurance claims
2 practices, or environmental hazards by also creating a presumption
3 against secrecy for settlement agreements and confidentiality
4 agreements not filed with the court and information acquired
5 through discovery.

6 (b) Notwithstanding any other provision of law, in an action
7 based upon injury, wrongful death, or financial loss allegedly
8 caused by a defective product, financial fraud, unfair insurance
9 claims practice, or environmental hazard, information ~~concerning~~
10 ~~the that is evidence of a~~ defective product, financial fraud, unfair
11 insurance claims practice, or environmental hazard contained in
12 settlement agreements and confidentiality agreements not filed
13 with the court, and information acquired through discovery
14 ~~concerning the that is evidence of a~~ defective product, financial
15 fraud, unfair insurance claims practice, or environmental hazard,
16 shall be presumed to be public information and may not be kept
17 confidential pursuant to agreement of the parties. This information
18 may be kept confidential for a period that the court deems
19 appropriate only pursuant to a court order based upon a finding that
20 either:

21 (1) The information is a trade secret, as defined in Section
22 3426.1 of the Civil Code, or otherwise privileged under existing
23 law.

24 (2) (A) An overriding interest exists that overcomes the right
25 of public access to the information.

26 (B) The overriding interest supports keeping the information
27 confidential.

28 (C) A substantial probability exists that the overriding interest
29 will be prejudiced if the information is not kept confidential.

30 (D) The proposed confidentiality is narrowly tailored.

31 (E) No less restrictive means exist to achieve the overriding
32 interest.

33 (c) Unless the information is a trade secret, as defined in
34 Section 3426.1 of the Civil Code, or otherwise privileged under
35 existing law, in an action based upon injury, wrongful death, or
36 financial loss allegedly caused by a defective product, financial
37 fraud, unfair insurance claims practice, or environmental hazard,
38 any portion of an agreement or contract that restricts a party from
39 disclosing information ~~relating to the that is evidence of a~~
40 defective product, financial fraud, unfair insurance claims

1 practice, or environmental hazard to a governmental agency with
2 enforcement authority over the defective product, financial fraud,
3 unfair insurance claims practice, or environmental hazard is void,
4 contrary to public policy, and may not be enforced.

5 (d) In order to implement this section, the court may require the
6 requesting party to provide an identifying log or other document.

7 (e) As used in this section:

8 (1) “Defective product” means a product that may be defective
9 because of a defect in manufacturing, or design, or a failure to
10 adequately warn the consumer of a hazard involved in the
11 foreseeable use of the product, where the defect may result in
12 personal injury to one or more persons.

13 (2) “Financial fraud” means any fraudulent insurance practice
14 or any fraudulent plan or scheme to sell a publicly offered
15 investment product without full disclosure of the risks associated
16 with the purchase of the product, where the plan or scheme may
17 cause or has caused financial loss.

18 (3) “Unfair insurance claims practice” means any act or
19 omission that would constitute a violation of subdivision (h) of
20 Section 790.03 of the Insurance Code.

21 (4) “Environmental hazard” means a release or threatened
22 release of a hazardous substance that poses a threat to public health
23 or safety involving present or future danger of death, bodily injury,
24 or health disability to human beings exposed to a hazardous
25 substance release or threatened release.

26 (f) An attorney shall not sell or offer for sale any information
27 obtained through discovery to any member of the State Bar or to
28 any other person in violation of the prohibitions on attorney
29 solicitation, fee splitting, or financial arrangements among
30 lawyers or nonlawyers included in Rules 1-320, 1-400, and 2-200
31 of the Rules of Professional Conduct adopted by the Supreme
32 Court. Violation of this paragraph shall be a basis for professional
33 discipline by the State Bar. This section does not alter or mitigate
34 any existing rule or provision that may also be applicable to the
35 conduct.

36 (g) Nothing in this section is intended to affect the
37 confidentiality of communications, negotiations, or settlement
38 ~~agreements~~ *discussions* between mediation participants pursuant
39 to Chapter 2 (commencing with Section 115) of Division 9 of the



1 Evidence Code, or the confidentiality of evidence protected by
2 Section 1153.5 or 1154 of the Evidence Code.

3 (h) Nothing in this section shall be deemed to prohibit the entry
4 or enforcement of that part of a confidentiality agreement,
5 settlement agreement, or stipulated agreement between the parties
6 which requires the nondisclosure of the amount of any money paid
7 in a settlement claim.

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